

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DOUGLAS B. POWELL,

Plaintiff,

v.

HARTFORD LIFE AND ACCIDENT
INSURANCE COMPANY, et al.

Defendants.

NO. C12-1705 TEH

ORDER RE CROSS-MOTIONS
FOR SUMMARY JUDGMENT

Plaintiff Douglas B. Powell brings this action under the Employee Retirement and Income Security Act (“ERISA”), 29 U.S.C. § 1001 *et seq.*, alleging that Defendant Hartford Life and Accident Insurance Company (“Hartford”) wrongfully miscalculated the long-term disability benefits that are due to him under his insurance policy by prorating one of the bonuses he received prior to becoming disabled over twelve months rather than over six months. Before the Court are the parties’ cross-motions for summary judgment. After conducting a bench trial and carefully reviewing the administrative record, the Court GRANTS Hartford’s motion for summary judgment and DENIES Powell’s for the reasons given below.

LEGAL STANDARD

ERISA provides that “a civil action may be brought . . . by a participant or beneficiary . . . to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan.” 29 U.S.C. § 1132(a)(1). An ERISA plaintiff is entitled to a bench trial on the administrative record, in which the traditional summary judgment standard embodied in Federal Rule of Civil Procedure 56 does not apply. *Kearney v. Standard Ins. Co.*, 175 F.3d 1084 (9th Cir.

1 1999) (en banc), *cert. denied*, 528 U.S. 964 (1999). Rather, such trials are governed by Rule
2 52, which provides that “the court must find the facts specially and state its conclusions of
3 law separately.” Fed. R. Civ. P. 52(a)(1).

4 5 **FINDINGS OF FACT**

6 Pursuant to Rule 52(a)(1), the Court makes the following findings of fact:

7 **A. Powell’s Long Term Disability Insurance Policy**

8 Powell is covered by a long-term disability insurance policy issued by Hartford to
9 Cadence Design Systems, Inc., where Powell was employed as a Software Architect before
10 becoming disabled. Hartford both administers Powell’s policy and pays benefits under it.
11 The policy provides that Hartford has “full discretion and authority to determine eligibility
12 for benefits and to construe and interpret all terms and provisions.” (AR 3815.)

13 Under the policy, Powell is entitled to receive a Monthly Benefit equal to 70% of his
14 pre-disability Monthly Income. (AR 1719, 1722, 1733.) Pre-disability Monthly Income is
15 determined by calculating “Monthly Rate of Basic Earnings,” defined as “regular monthly
16 pay, including bonuses” at “the rate in effect on your last day as an Active Full-time
17 Employee before becoming Disabled.” (AR 1727.) The policy does not set out any
18 methodology of accounting for bonuses in calculating the Monthly Rate of Basic Earnings.

19 **B. Powell’s Claim**

20 Powell submitted a long-term disability claim to Hartford in August 1995. (AR 579-
21 80.) On April 1, 1996, Hartford approved Powell’s claim, finding that as of May 13, 1995,
22 Powell was totally disabled from performing his job due to a repetitive stress injury. (AR
23 479-81.) Hartford calculated Powell’s Monthly Benefit as \$3,801.95, or 70% of a pre-
24 disability Monthly Income of \$5431.35. (AR 481.) This figure did not include any of
25 Powell’s bonus income.

26 In August 1995, Cadence awarded Powell the bonus that is at issue in this case: a
27 “MBO/Key Contributor Bonus” of \$5,964.78. (AR 1703.) Under Cadence’s Key Contributor
28 Bonus Plan, the amount of this Bonus was determined based on Powell’s work “for the

1 period January 1, 1995 to June 30, 1995.” (AR 1706.) The plan provided that, “in the event
2 of . . . disability, a pro-rata bonus . . . will be paid to the employee.” (AR 1706.) Powell was
3 on disability leave for 47 days during the period between January 1, 1995, and June 30, 1995.

4 On February 14, 2001, Powell wrote to Hartford and requested that it include all the
5 bonuses he had earned prior to becoming disabled – among them the MBO/Key Contributor
6 Bonus – in its calculation of his pre-disability Monthly Income. (AR 688-89.) He requested
7 that the MBO/Key Contributor bonus be prorated over the six-month period in which he
8 earned it. (AR 688.) On May 24, 2001, Powell wrote to Hartford again, this time providing
9 Hartford with a document from Cadence summarizing his “Bonus History” while employed
10 there. (AR 655-56.) When Hartford did not respond, Powell filed a complaint with the
11 California Department of Insurance. (AR 616.) On February 26, 2002, the Department of
12 Insurance wrote to Hartford and demanded that it investigate Powell’s claim that his benefit
13 had been incorrectly calculated and inform Powell in writing of the results within 21 days.
14 (AR 616.)

15 On May 18, 2002, Hartford responded to Powell, copying the Department of
16 Insurance, and explained that it had recalculated Powell’s Monthly Benefit to include the
17 bonuses he had received in the year before he became disabled, and that he would now
18 receive a monthly benefit of \$3,989.10, based on a Monthly Rate of Basic Earnings of
19 \$5,698.95. (AR 602-04.) Hartford also paid Powell corresponding retroactive benefits, with
20 10% interest. (AR 602-04.) However, in recalculating Powell’s monthly benefit, Hartford
21 did not include the several bonuses that Powell earned in the year preceding the onset of his
22 disability, but did not receive until after he became disabled, among them the MBO/Key
23 Contributor Bonus.

24 In 2005, Hartford ordered a two-day-long Functional Capacity Evaluation of Powell.
25 The evaluator concluded that “it would be difficult for Powell to sustain an 8 hour workday
26 at this time” because of his “need for frequent positional changes, limited ability to sustain
27 use of right dominant upper extremity, and increase in location of and report of pain
28 symptoms experienced in response to the physical demands of testing.” (AR 1020.)

1 In 2006, Hartford conducted an investigation of Powell's disability claim, which
2 included surveillance of Powell as he went about his daily activities and an independent
3 expert review of Powell's medical records commissioned by Hartford. (AR 934-43, 2316-34,
4 2348-55, 2358-63.) The independent expert review did not mention the 2005 Functional
5 Capacity Evaluation, and its conclusions were not supported by Powell's medical records.
6 (AR 934-43, 2166, 2169-70.) Based on its investigation, Hartford determined that Powell no
7 longer qualified for benefits under the policy. In a letter dated April 27, 2007, Hartford
8 terminated his benefits effective April 30, 2007. (AR 927-33.)

9 On November 29, 2007, Powell, through counsel, filed an appeal of the termination of
10 his benefits with Hartford's appeals unit. (AR 2164.) In the appeal letter, Powell also
11 disputed Hartford's calculation of the benefits to which he was entitled on the ground that it
12 did not include the bonuses Powell had earned in the year prior to the onset of his disability,
13 but did not receive until after becoming disabled. (AR 2164.) On February 20, 2008,
14 Hartford wrote to Powell to inform him that it had reinstated his benefits and recalculated his
15 Monthly Benefit. (AR 156.) The recalculated Monthly Benefit amount was the same as the
16 benefit Powell had received prior to the termination of his claim, \$3989.10, and Hartford did
17 not explain why it had not revised its calculation. (AR 156.)

18 On September 30, 2008, Powell again wrote to Hartford through counsel, requesting
19 that all the bonuses he earned in the twelve months before he became disabled be included in
20 the calculation of his Monthly Rate of Basic Earnings. (AR 1940-44.) After receiving
21 Powell's letter, Hartford reviewed his file and agreed to include the MBO/Key Contributor
22 bonus and one other bonus that Powell received in August 1995, a "Special Achievement
23 Award" in its calculation of his Monthly Rate of Basic Earnings. Hartford refused to include
24 a "Patent Award" that Powell received in December 1997, stating that it did not consider the
25 award a bonus. Hartford recalculated Powell's monthly benefit to be \$4,460.36 and paid him
26 retroactive benefits, together with 4.21% interest commencing on November 29, 2007, when
27 Powell first disputed Hartford's March 2002 recalculation of his benefits. (AR 1760.) As
28

1 part of this calculation, Hartford averaged Powell's MBO/Key Contributor Bonus over
2 twelve months, without explanation.

3 On March 13, 2009, Powell wrote to Hartford arguing that the MBO/Key Contributor
4 Bonus should be averaged over the six-month period in which he earned it, and that the
5 Patent Award should be included in his Monthly Rate of Basic Earnings. (AR 1659-60.)
6 Powell further contended, for the first time, that in calculating his Monthly Benefit, his
7 MBO/Key Contributor Bonus should be prorated to take into account the 47 days he was on
8 disability between January 1, 1995 and June 30, 1995. (AR 1653.)

9 On May 21, 2009, Hartford informed Powell that it would not include the Patent
10 Award in its calculation of his Monthly Benefit. (AR 1475.) With respect to Powell's
11 request that the MBO/Key Contributor Bonus be averaged over six months, Hartford
12 explained that "unless otherwise specified in the policy, bonuses are averaged over a twelve-
13 month time period." (AR 1475.)

14 Powell appealed this determination on June 24, 2009, and on July 20, 2009, Hartford
15 informed him that it had determined that "an adjustment is in order which will include the
16 Patent Award that Mr. Powell received." (AR 1464, 1450.) It subsequently sent Powell a
17 check for back benefits. (AR 123, 1450.) Hartford did not address Powell's argument with
18 respect to the prorating of his MBO/Key Contributor Bonus over six months (minus 47
19 days), rather than twelve months.

20 21 **CONCLUSIONS OF LAW**

22 In his motion for summary judgment, Powell argues that Hartford abused its discretion
23 by failing to average his MBO/Key Contributor Bonus over six months (minus 47 days),
24 rather than twelve months. Powell asks the Court to enter an order directing Hartford to
25 remit to him the underpayment of his benefits, assuming a corrected Monthly Benefit of
26 \$5,044.04, together with 10% annual prejudgment interest. In its motion, Hartford requests
27 that the Court determine that it did not abuse its discretion in averaging Powell's bonus over
28 twelve months.

1 Pursuant to Rule 52(a)(1), the Court states the following conclusions of law:

2 Because Powell's long-term disability plan grants discretionary authority to Hartford,
3 Hartford's decision to average Powell's bonus over a one-year period rather than a six-month
4 period is subject to abuse of discretion review. *Firestone Tire and Rubber Co. v. Bruch*, 489
5 U.S. 101, 115 (1989). An administrator's benefits decision is an abuse of discretion if it is
6 "(1) illogical, (2) implausible, or (3) without support in inferences that may be drawn from
7 the facts in the record." *Salomaa v. Honda Long Term Disability Plan*, 642 F.3d 666, 676
8 (9th Cir. 2011) (internal quotation marks and citation omitted).

9 When "a benefit plan gives discretion to an administrator or fiduciary who is
10 operating under a conflict of interest, that conflict must be weighed as a factor in determining
11 whether there is an abuse of discretion." *Metropolitan Life Ins. Co. v. Glenn*, 554 U.S. 105,
12 111 (2008) (internal quotation marks, citation, and alteration omitted). Hartford, as an entity
13 that "both determines whether an employee is eligible for benefits and pays benefits out of its
14 own pocket," is operating under a conflict of interest. *Id.* at 108.

15 When a conflict of interest is present, a court must take it into account in determining
16 whether the insurer has abused its discretion. *Id.* at 115. "[T]he degree of skepticism with
17 which [courts] regard a plan administrator's decision when determining whether the
18 administrator abused its discretion varies based upon the extent to which the decision appears
19 to have been affected by a conflict of interest." *Stephan v. Unum Life Ins. Co. of America*,
20 697 F.3d 917, 929 (9th Cir. 2012).

21 Enhanced skepticism is appropriate in the present case because Hartford's conflict of
22 interest tainted much of its decision-making process with respect to Powell's claim.
23 Hartford's 2007 termination of Powell's benefits was based largely on an expert review
24 commissioned by Hartford. The expert's determinations were unsupported by Powell's
25 medical records and disregarded the 2005 Functional Capacity Evaluation that concluded it
26 would be difficult for Powell to sustain an eight-hour workday. Additionally, in calculating
27 Powell's Monthly Benefit, Hartford recalcitrantly excluded bonuses that Powell earned
28 before the onset of his disability, but that were paid to him after he became disabled.

1 Hartford excluded these bonuses despite multiple requests from Powell that it include them,
2 and despite the fact that the exclusion of such bonuses is inconsistent with the policy's
3 definition of Monthly Rate of Basic Earnings, which focuses on an employee's pay rate,
4 rather than pay received prior to the onset of disability. (AR 1727.) See *Stephan*, 697 F.3d at
5 935-36 (observing that the exclusion of bonuses paid out after the onset of disability would
6 result in "arbitrary distinctions" among claimants based on when they received the bonuses
7 they earned before becoming disabled). Only after receiving multiple requests from Powell
8 and his counsel over a period of eight years did Hartford finally begin to include all of the
9 bonuses Powell earned during the year prior to the onset of his disability in the calculation of
10 his Monthly Benefit. By shortchanging Powell of benefit funds to which he was indisputably
11 entitled, Hartford demonstrated that it prioritizes its own bottom line over its duty, under
12 ERISA, to process claims "solely in the interests of the [plan's] participants and
13 beneficiaries." 29 U.S.C. § 1104(a)(1).

14 However, it is not clear that Hartford's conflict of interest impacted the decision
15 central to this case – whether to average Powell's MBO/Key Contributor Bonus over six
16 months (minus 47 days), as he requested, or over twelve months. Hartford asserts that it
17 made this decision pursuant to a uniform policy of averaging all bonuses earned in the year
18 prior to the onset of disability over twelve months in calculating the Monthly Rate of Basic
19 Earnings when the insurance policy does not specify otherwise. One of ERISA's purposes is
20 to promote uniformity in benefits administration. *Conkright v. Frommert*, 130 S.Ct. 1640,
21 1649 (2010). A plan administrator's obligation to "establish and maintain reasonable claims
22 procedures" includes the obligation to ensure that "plan provisions have been applied
23 consistently with respect to similarly situated claimants." 29 C.F.R. § 2560.503-1(b)(5).
24 There is no evidence suggesting that, as a general practice, Hartford has exploited the
25 ambiguity in the policy language with respect to how to include bonuses in the Monthly Rate
26 of Basic Earnings in order to minimize the amount it is required to pay out in Monthly
27 Benefits to claimants generally.

Even viewing Hartford's decision skeptically, it did not abuse its discretion by averaging Powell's MBO/Key Contributor Bonus over twelve months. Both Powell's preferred formula of accounting for bonuses and the formula that Hartford chose are reasonable and consistent with the ambiguous policy language. Powell does not contest Hartford's averaging of his bonuses over a twelve-month period with respect to his quarterly bonuses or the one-time Patent Award he received. And there is little doubt that had Powell earned his MBO/Key Contributor Bonus in the first six months of the year preceding the onset of his disability, he would, very reasonably, have requested that it be averaged over twelve months and included in Hartford's calculation of his Monthly Rate of Basic Earnings together with the other bonuses. It is in the interests of a plan's participants and beneficiaries, as well as its administrators, to have a uniform policy with respect to how to account for bonuses in calculating the Monthly Rate of Basic Earnings upon which the Monthly Benefit is based. Although Hartford's policy of averaging bonuses earned in the year preceding the onset of disability over twelve months is financially advantageous to it in Powell's case, it surely results in higher Monthly Benefit payments for many claimants. Because Hartford's decision to average Powell's MBO/Key Contributor Bonus over twelve months in calculating his Monthly Rate of Basic Earnings was reasonable and not contrary to the language of Powell's policy, it was not an abuse of discretion.

CONCLUSION

For the reasons given above, Hartford's motion for summary judgment is GRANTED and Powell's motion for summary judgment is DENIED. The Clerk of Court shall enter judgment in favor of Hartford.

IT IS SO ORDERED.

Dated: July 11, 2013



THELTON E. HENDERSON, JUDGE
UNITED STATES DISTRICT COURT